



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 31, 1995

Mr. Bill Malinowski  
Director of Administrative Services  
Fort Bend Independent School District  
P.O. Box 1004  
Sugar Land, Texas 77487-2548

OR95-749

Dear Mr. Malinowski:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33336.

The Fort Bend Independent School District (the "school district") received an open records request for all information related to the school district's selection of a law firm to collect delinquent taxes. You inform us that the school district has not yet selected a law firm to collect delinquent taxes, but is engaged in the process of making that selection. You also inform us that the requestor is an attorney in a law firm that is competing for the delinquent tax collection contract. You contend that the disclosure of all of the information related to the selection of a law firm is excepted from disclosure pursuant to section 552.104 of the Government Code since the release of the requested information would give an advantage to competitors or bidders. You state that, once the school district has selected a law firm to collect delinquent taxes, the information requested will be disclosed since at that point in time section 552.104 would no longer except the information from required disclosure. You have submitted for our review a representative sample of the responsive documents.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). Section 552.104 is designed to protect the interests of governmental bodies and not the interests of private parties submitting information to the government.

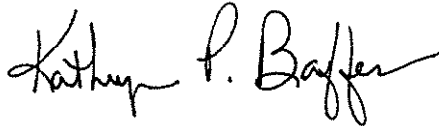
Open Records Decision No. 592 (1991) at 8. Governmental bodies may withhold this type of information while the governmental officials are in the process of evaluating the proposals and may ask the competitors to clarify their bids. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982), 184 (1978).

You contend that, since the school district is engaged in competitive bidding, the requestor, also a bidder for the contract, may gain an unfair advantage in the bidding process by receiving information another competitor has worked to put together for its proposal. Additionally, you contend that disclosing the requested information could harm the school district by causing the cost estimates by all of the bidders for delinquent tax collection to increase. Because you state that the school district has not yet awarded the delinquent tax collection contract, you may withhold the requested information at this time pursuant to section 552.104, with the exception of one document submitted for our review. The document titled "Fort Bend Independent School District Notice of Called Meeting And Workshop Session" is considered public information under the Open Meetings Act. *See* Gov't Code § 551.051. The notice document contains no information, that, if released, could cause harm to the school district or give an unfair advantage to any of the law firms competing for the delinquent tax collection contract. Consequently, the notice document may not be withheld pursuant to section 552.104 of the Government Code. Release of the remainder of the requested information during the time that competitors may clarify, modify, or withdraw their proposals could result in an advantage to the requestor for the delinquent tax collection contract or damage the school district's ability to obtain truly competitive bids. We note that once the bidding has ceased and a contract is awarded, section 552.104 will not except from required disclosure either the information submitted with a proposal or the contract itself. Open Records Decision No. 514 (1988) at 2.

We note that the school district submitted to this office a "representative sample" of the requested information. Thus, in reaching our conclusion here, we assume that the "representative sample" of records submitted for our review is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Kathryn P. Baffes". The signature is fluid and cursive, with the first name "Kathryn" being more prominent than the last name "Baffes".

Kathryn P. Baffes  
Assistant Attorney General  
Open Government Section

KPB/KHG/rho

Ref: ID# 33336

Enclosures: Submitted documents

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(w/o enclosures)